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ARCIERO, ADAM A				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/578,408

**Applicant(s)**

SUZUKI ET AL.

**Examiner**

ADAM A. ARCIERO

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 March 2006.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☐ Claim(s) 1-11 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 05 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date 05/05/2006  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Summary***

1. This is the initial Office action based on the Battery application filed on 11/02/2004.
2. Claims 1-11 are currently pending and have been fully considered.

### ***Priority***

3. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 4 is a multiple dependent claim which depends on any of claims 1 to 3 which recites "the battery according to any of claim 1 to 3, wherein said cover member is cup-shaped." The battery according to claim 3 has a cover member which entirely covers the power generating element of a battery. Therefore, it is unclear how the "cover member" depending from claim 3 where the cover member is viewed as a single "cover" that encompasses the power generating element as a whole can be "cup-shaped". The Examiner views the term "cup-shaped" as having an opening on one end so that it may "cup" or encompass the object desired to be covered, such as the power generating element of the battery.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by HATAZAWA et al. (US Patent No. 6,428,934 B1).

As to Claims 1 and 3, HATAZAWA et al. discloses nonaqueous electrolyte battery wherein the battery element (power generating element) comprises a negative electrode and a positive electrode (col. 1, lines 61-67). HATAZAWA et al. does not expressly disclose a separator but it is inherent that nonaqueous electrolyte batteries employ separators to separate the negative electrode from the positive electrode, otherwise the nonaqueous electrolyte battery would not function. HATAZAWA et al. further discloses that said battery element (power generating element) is accommodated in a battery case wherein: said battery case is constituted by a laminate film (flexible sheet), and a resin layer (cover member) is formed on one or more surfaces of the battery element (power generating element) so that the battery element (power generating element) and casing are isolated from each other (col. 1, lines 61-67). Said resin layer (cover member) may also entirely cover said battery element (power generating element) in said battery case (col. 1, line 65 and also shown in Fig. 3).

As to Claim 2, HATAZAWA et al. discloses the battery according to claim 1, wherein said positive and negative electrodes comprise a non-coated portion, and the part covered with said cover member is said non-coated portion. More specifically, a battery where a positive-electrode-terminal lead and a negative-electrode-terminal lead were welded to the surface of the portion of the pole plate on which the active material was not applied (col. 8, lines 21-24).

As to Claims 4 and 5, HATAZAWA et al. discloses the battery according to claim 1, wherein said resin layer (cover member) is cup-shaped. The non-aqueous electrolyte battery has a structure that one or more surfaces between the battery element 1 (power generating element) and the laminate film (battery casing) is provided with a resin layer (cover member). In one embodiment, resin layers 5 and 6 (cover members) are disposed on the end surfaces of the wound battery element 1 (power generating element) (col. 2, lines 56-65 and shown in Fig. 1). The resin layers 5 and 6 (cover members) disposed on the end surfaces of the battery element 1 (power generating element) “cup” the end surfaces with the open sides facing each other (as shown in Fig. 1).

As to Claim 6, HATAZAWA et al. discloses the battery according to any of claims 1 to 3, wherein said battery is hermetically sealed, and a pressure inside the battery is lower than atmospheric pressure in order to remove moisture and improve air-tightness (col. 3, lines 14-19).

As to Claim 7, HATAZAWA et al. discloses the product of a battery comprising a power generating element. Claim 7 is a product-by-process claim. “Even though product-by-process

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claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” (*In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). The manufacturing process steps would not impart distinctive structural characteristics to the final product (MPEP 2113). HATAZAWA et al. also discloses the battery according to any of claim 1 to 3, wherein said battery element (power generating element) is a wound battery element 1 (col. 2, lines 59-61).

As to Claim 8, HATAZAWA et al. discloses a nonaqueous electrolyte battery according to claim 4, wherein the resin layer (cover member) is formed between the battery element (power generating element) and the laminate film (flexible sheet), thereby enabling the accommodated battery to be protected from external impact (col. 3, lines 32-36).

As to Claim 9, HATAZAWA et al. discloses an example where the resin plate (cover member) has a thickness of 300 microns which correlates to 0.3mm (col. 8, lines 30-31). This thickness of 0.3mm directly falls within the claimed range of 0.1-5mm. A single value within the claimed range anticipates the claimed range (MPEP 2131.03).

As to Claim 10, HATAZAWA et al. discloses a nonaqueous electrolyte battery according to any of claim 1 to 3, wherein said cover member is a resin molded part (col. 3, lines 37-41).

8. Claims 1 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by KODAMA (JP 2002-289154 A).

As to Claims 1 and 11, KODAMA discloses a nonaqueous electrolyte battery having a armor body casing **10** (flexible sheet) that houses an electrode body comprising a positive electrode plate, a negative electrode plate with a separator sandwiched between said plates. Said battery comprises a reinforcing sheet (cover member) attached to the electrode body (pg. 10, [0007]). Said armor body casing **10** is composed of a laminate film (flexible sheet) with a thickness of 100 microns (pg. 10, [0010] and as shown in Fig. 1). The thickness of 100 microns corresponds to 0.1 mm which falls directly within the claimed range. A single value within the claimed range anticipates the claimed range (MPEP 2131.03).

### *Conclusion*

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam A. Arciero whose telephone number is 571-270-5116. The examiner can normally be reached on Monday through Thursday, 7:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Susy Tsang-Foster can be reached on 571-272-1293. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AA

/Susy N Tsang-Foster/

Supervisory Patent Examiner, Art Unit 1795